

SEAN P. PATTERSON, Esq.  
STATE BAR NUMBER 5736  
232 Court Street  
Reno, Nevada 89501  
(775) 786-1615

ELECTRONICALLY FILED  
11-18-09

Attorney for Debtors

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

\* \* \*

IN RE:  
YON CHU LAN  
JOSEFINA LAN

Case No. BK-N-09-51087-GWZ  
(Chapter 13)

**OPPOSITION TO DISMISSAL**

Hearing Date: 6-12-09  
Hearing Time: 2:00 p.m.  
Time Required: 5 Minutes

Debtors.

COMES NOW, the debtors, by and through their attorney, Sean P. Patterson, Esq. and oppose the HSBC Bank USA's (hereinafter "Movant") Motion for Relief from Stay. This opposition is brought pursuant to the Points and Authorities included herein, and on further oral argument of counsel as may be presented at the time of hearing.

POINTS AND AUTHORITIES

**I. FACTS**

This case was filed on or about April 15, 2009. The plan was filed on the same day. The case was filed to allow the debtors to reorganize their unsecured debt, and "strip" the second mortgage off their residence. The plan was confirmed on July 24, 2009.

The debtors have had income problems since the case was filed. The debtors work in the Casino business, and they have lost some hours since the case was filed. The debtors are trying to do a "workout agreement" with this creditor.

This is Mr. & Mrs. Lan's personal residence. The debtors are not selling this house, they are sincerely trying to save this house.

**II. LEGAL ARGUMENT**

To obtain relief under 11 USC §362(d)(1) the court can grant relief for "cause". The Bankruptcy Code is silent with respect to the definition of "cause". However, courts have held that "cause" can be demonstrated by a debtor's continued failure to make payments to a secured creditor. In re Wright, Egan, & Associates, 60 B.R. 806, 807 (E.D. Pa. 1986); In re Smith, 94 B.R. 216 (Bankr. M.D. Ga. 1988).

To obtain relief under 11 U.S.C. §362(d)(2) a creditor must make a **prima facie** (emphasis added) case that (1) the property is over-encumbered, and (2) it is not necessary for an effective reorganization. In re Elmore, 94 B.R. 670 (Bkrtcy C.D. Cal. 1988). A debtor's principal residence in a Chapter 13 case is virtually always necessary to an effective reorganization... if the home is

1 not saved, the reorganization is not effective. Elmore at 673.

2 As to the §362(d)(1) argument, counsel has confirmed that the  
3 debtor are not current on the payments. However, the debtors  
4 related to counsel that they are trying to do a workout agreement  
5 on this mortgage. Counsel shall provide proof of this fact when he  
6 receives it from the debtors.

7 This property is the Lan's residence. The debtors do not have  
8 equity in the property. Nevertheless, the bankruptcy was filed to  
9 protect the residence. The debtors would like to avoid the cost of  
10 a foreclosure and lose their residence.

11 A secured claim holder has the burden of proving the  
12 reasonableness of its fee claim, whether under §506(b) or under  
13 §1322. In re Atwood, 293 B.R. 227, 233 (9th.Cir.BAP 2003). The  
14 creditor has failed to provide any evidence of attorney time in its  
15 motion. Thus, any attorneys fees requested in this motion should  
16 be disallowed.

17 The creditor can not make as Prima facie case that this  
18 property is over-encumbered **and** that it is not effective for a  
19 reorganization. For the reasons aforementioned, the debtor asks  
20 that the Motion be denied and the attorneys fees and costs denied.  
21 In the alternative, continue this motion for 60 days to allow the  
22 debtors to do a workout agreement with this creditor.

23 //

24 ///

25 ////

26 /////

27 /////

28

1 In the event that the court does not deny this motion, that an  
2 order of "Adequate Protection" be entered into by the court. The  
3 debtors would like 6 months to bring the post-petition payments  
4 current with this creditor.

5 Respectfully Submitted this 18th day of November, 2009.

6  
7 /s/ SEAN P. PATTERSON, ESQ.  
8 SEAN P. PATTERSON, Esq.  
9

10 CERTIFICATE OF SERVICE

11 Pursuant to the Federal Rules of Civil Procedure, Rule 5(b),  
12 I hereby certify that I am an employee of the law firm of **SEAN P.**  
13 **PATTERSON**, 232 Court Street, Reno, Nevada 89501; and that on this  
14 date, I mailed a true and correct copy of the foregoing document  
15 via the United States mail, postage prepaid to:  
16

17 Yon & Josefina Lan  
18 1475 Hagar Rd.  
19 Reno, NV. 89506

20 This document was sent via electronic mail to:

21 William Van Meter  
22 cl3ecf@nvbell.net

23 Gregory L. Wilde, Esq.  
24 Attorney for HSBC  
25 bk@wilddelaw.com

26 DATED: November 18, 2009.  
27

28 /s/ Sean P. Patterson  
SEAN P. PATTERSON, ESQ.